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Southern District of New York  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SUSAN J. RUSSO, :  
Plaintiff, :  
-against- : 07 Civ. 03096 (SAS) (DCF)  
Defendants. : ANSWER  
----- x

The defendants United States of America and Michael Wesolowski, by their attorney Michael J. Garcia, United States Attorney for the Southern District of New York, answer the complaint on information and belief as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Deny the allegations in paragraph 2 and aver that the United States of America is a sovereign.
3. The allegations in paragraph 3 set forth conclusions of law, to which no response is required. To the extent a response is required, defendants deny the allegations in paragraph 3, except aver that a claim was presented on behalf of the plaintiff to the United States Postal Service (the "Postal Service") on or about February 21, 2006. Paragraph 3 also refers the

reader to a document attached to the complaint, to which no response is required. To the extent a response is required to the referenced document, defendants respectfully refer the Court to the document for the contents thereof.

4. Deny the allegations in paragraph 4, except aver that plaintiff's claim was denied by the Postal Service on October 3, 2006. Paragraph 4 also refers the reader to a document attached to the complaint, to which no response is required. To the extent a response is required to the referenced document, defendants respectfully refer the Court to the document for the contents thereof.

5. Admit the allegations in paragraph 5.

6. Deny the allegations in paragraph 6, except admit that Michael Wesolowski was an employee of the Postal Service on September 16, 2005.

7. Admit the allegations in paragraph 7.

8. Deny the allegations in paragraph 8.

9. Deny the allegations in paragraph 9, except aver that on September 16, 2005, Michael Wesolowski drove the Postal Service vehicle bearing identification number 6510402 with the knowledge, permission, and consent of the Postal Service.

10. Deny the allegations in paragraph 10, except aver that on September 16, 2005, Michael Wesolowski drove the Postal Service vehicle bearing identification number 6510402 during the course of his employment with the Postal Service.

11. Deny the allegations in paragraph 11.

12. Deny the allegations in paragraph 12.

13. Deny the allegations in paragraph 13.

14. Deny the allegations in paragraph 14.

15. Deny the allegations in paragraph 15.

16. Deny the allegations in paragraph 16.

17. The allegations in paragraph 17 set forth conclusions of law, to which no response is required. To the extent a response is required, defendants deny the allegations in paragraph 17.

18. The allegations in paragraph 18 purport to characterize plaintiff's claims in this action, to which no response is required. To the extent a response is required, defendants deny the allegations contained in paragraph 18 of the complaint, except admit that plaintiff purports to bring this action pursuant to the "provisions of the Federal Tort Claims Act."

19. Deny the allegations in paragraph 19.

20. The un-numbered paragraph beginning with "WHEREFORE" contains plaintiff's prayer for relief to which no response is required. To the extent a response is required, defendants deny the allegations contained in the un-numbered paragraph beginning with "WHEREFORE."

DEFENSE

21. Plaintiff has failed to exhaust her administrative remedies.

DEFENSE

22. The injuries and damages alleged in the complaint were not proximately caused by a negligent or wrongful act or omission of an employee of the United States.

DEFENSE

23. In the event the Postal Service is found to have been negligent, which negligence defendants deny, the negligence of plaintiff contributed to causing plaintiff's injuries and any recovery must be proportionately reduced.

DEFENSE

24. Plaintiff was guilty of culpable conduct in total diminution of her claim for damages.

DEFENSE

25. Michael Wesolowski is not a proper party in this action under the Federal Tort Claims Act. See 28 U.S.C. § 2679(a).

DEFENSE

26. Plaintiff's claim is barred by the New York Comprehensive State Motor Vehicle Insurance Reparations Act. N.Y. Ins. Law §§ 5101-5108.

WHEREFORE, defendants demand judgment dismissing the complaint and granting such other and further relief as this Court deems proper, including costs and disbursements.

Dated: New York, New York  
July 9, 2007

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Attorney for Defendants

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